IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 481 of 2006
With
CIVIL APPLICATION No. 2644 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MR SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAROTAR NAGRIK SAHAKARI BANK LTD. - Appellant(s)
Versus
MINESHBHAI KIRITBHAI PATEL & 6 - Defendant(s)

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Appearance :
MR AJ YAGNIK for Appellant(s) : 1,
MR BK DAMANI for Defendant(s) : 1,
None for Defendant(s) : 2 - 7.

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CORAM : HONOURABLE MR.JUSTICE MR SHAH
Date : 23/08/2006

ORAL JUDGMENT

With the consent of the parties, the main First Appeal itself was heard for final hearing. During the course of hearing, it is submitted that the appellant, respondent No.1 herein, original decree holder and the

auction purchaser i.e the respondent No.8 herein have entered into a consent terms and it is agreed between the parties that the sale in favour of the auction purchaser – respondent No.8 herein be set aside and that an amount of Rs.15 lacs will be paid by the appellant – Bank towards the sale consideration in respect of the Flat in question. It is submitted that out of aforesaid amount of Rs. 15 lacs, an amount of Rs.11,50,000/- is already deposited by the appellant – Bank with this Court and on execution of the registered sale-deed in favour of the appellant as contemplated and stipulated in the consent terms, the respondent No.8 herein would be entitled to withdraw the said amount of Rs.11,50,000/-. It is also agreed between the parties that the appellant – Bank would deposit an amount of Rs.3,50,000/- i.e balance amount of Rs.15 lacs with the Execution Court on or before 31st August, 2006 and let the sale-deed in favour of the appellant be executed by the officer to be appointed by the Executing Court for sale consideration of Rs.15 lacs. On considering the overall facts and circumstances and the consent terms, this Court is of the opinion that the said consent terms would be in the interest of all the concerned inclusive of the appellant – Bank and even the judgment debtor also as the appellant

– Bank would be in a position to sell the other Flats also i.e. entire scheme and would realize the amount, which can be paid to the other creditors inclusive of the debtors, etc., and so far as original judgment debtor is concerned, earlier, only Rs.6 lacs was appropriated and/or adjusted towards its dues, however, now Rs.15 lacs would be adjusted and/or appropriated towards the dues of the original judgment debtor. The consent term is directed to be taken on record. The order in terms of the consent terms and the consequent sale in favour of the respondent No.8 is set aside and the parties are directed to act as per the consent terms and the learned Executing Court is directed to proceed further in accordance with the consent terms and do needful as contemplated under the consent terms as early as possible but not later than 31st December, 2006. This appeal is accordingly disposed of in terms of the consent terms and the order passed by the learned Executing Court, which is impugned in the present appeal is, modified to the aforesaid extent. No costs.

Office is directed to sent the writ of this order to the learned Executing Court immediately.

In view of disposal of the main First Appeal, no orders in the Civil Application.

Direct Service permitted.

[M.R.SHAH, J.]

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